

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TRUTEK CORP.,

Plaintiff,

v.

YEONG WAN CHO (a.k.a. PETER CHO,
ET AL.,

Defendants.

Civil Action No.: 2:23-cv-3709

Document Electronically Filed

**DEFENDANTS PETER CHO, BIOSURE GLOBAL, LTD.,
SALVACION USA, INC., AND SALVACION INTERNATIONAL LLC'S
MEMORANDUM SUPPORTING THEIR MOTION TO STRIKE**

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ARGUMENT

Defendants Peter Cho, BioSure Global, Ltd., Salvacion International, LLC, and Salvacion USA, Inc. (the “Moving Defendants”) move this Court to strike the affidavit filed by Trutek Corp. in support of its Memorandum of Law in Opposition to Defendants’ Consolidated Motion to Dismiss. In support of this motion, the Moving Defendants state as follows:

Trutek filed its Complaint on July 11, 2023. The Moving Defendants served a consolidated motion to dismiss on October 25, 2023. Trutek served its Memorandum of Law in Opposition to Defendants’ Consolidated Motion to Dismiss (“Response”) on November 22, 2023. With the Response, Trutek served an affidavit (Exhibit 4 thereto) purporting to provide additional facts in opposition to Defendants’ Consolidated Motion.

The affidavit attempts to add facts to refute Defendants’ arguments in the Consolidated Motion that Counts Five and Six fail to state a claim upon which relief can be granted. (*See* Trutek’s Resp., at 30, 31, and 34 (asserting that the Affidavit contains additional “further” facts, “more specific” facts, and facts with “more detail” than those alleged in the Complaint to support its state and federal misappropriation of trade secrets claims). It is well-established that on a Rule 12(b)(6) motion to dismiss,¹ the Court considers only the “four corners of the complaint, exhibits attached thereto, matters of public record, and indisputably authentic documents that the plaintiff’s claims rely upon.” *Silla v. Hldgs. Acquisition Co LP*, 2021 WL 4206169, at *2 (3d Cir. Sept. 16, 2021). Parties cannot fix the fatal flaws in their pleadings by tacking on additional allegations after the fact. *State Cap. Title & Abstract Co. v. Pappas Bus. Servs., LLC*, 646 F. Supp. 2d 668, 676–77 (D.N.J. 2009).

¹ While the Court may consider an affidavit under a Rule 12(b)(2) analysis, Trutek did not refer to or cite the affidavit as evidence against BioSure’s Rule 12(b)(2) arguments.

For the foregoing reasons, the Moving Defendants respectfully move this Court to strike the affidavit (Exhibit 4 to Trutek's Response). Even if the Court considered the affidavit, the affidavit is futile and does not fix the fatal flaws with Trutek's Counts Five and Six. Those Counts still would fail as a matter of law for the reasons articulated in the Moving Defendant's Memorandum in Support of the Consolidated Motion to Dismiss and in their Reply.

Dated: December 14, 2023

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that, on this day, the foregoing document was filed with the Clerk of the Court through the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: December 14, 2023

Respectfully submitted,

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